

REMARKS

This substitute amendment has been filed to place the application in better form for examination. An action on the merits is respectfully requested. Please enter this response in lieu of the response submitted on October 3, 2007 for the above-identified application.

Applicants have studied the Office Action dated May 3, 2007. Claims 1-16 and 55-57 are pending. Claims 55-57 have been added. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks are respectfully requested.

In the Office Action, the Examiner:

- Objected to the Specification because of an embedded hyperlink;
- Objected to claims 1, 6, 9, 13, 14, and 16 for informalities;
- Rejected claims 1-16 under 35 U.S.C. 112, ¶ 2, as being indefinite;
- Rejected claims 1-9 under 35 U.S.C. § 102(e) as being anticipated by Hogan (U.S. Pat. No. 6,315,193);
- Rejected claims 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Hogan (U.S. Pat. No. 6,315,193) in view of Kazaks (U.S. Pat. Pub. 2002/0046341); and
- Rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Hogan (U.S. Pat. No. 6,315,193) in view of Kazaks (U.S. Pat. Pub. 2002/0046341) and in further view of Voltmer (U.S. Pat. Pub. 2002/0112177).

Telephonic Interview

As an initial matter, the Applicants would like to thank Examiner Chandler for the telephonic interview held on October 10, 2007 and follow-up telephone call on October 29, 2007. The Applicant's representative Jon Gibbons participated in both telephone calls. The Applicant's representatives discussed the independent claim 1 as it relates to

Hogan, especially the language regarding “transaction information including”. The Applicant’s representative agreed to limit this language to read “consisting only of” to distinguish over Hogan’s use of other financial information. Specifically, independent claims 1 and 56 recite “based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

Discussed also was the language “if” and agreed to amend this language to “when” to further clarify the context. The language “sufficient” was deemed indefinite. The Applicants thank the Examiner Chandler for the suggestion. Independent claims 1 and 56 “authorizing the purchase transaction when funds in the first account plus the first credit limit are greater than or equal to an amount of the purchase transaction.” This clarifies that it is an amount that is greater than or equal to funds in the account.

Also as suggested by the Examiner Chandler, independent claims 1 and 56 have been amended to recite a useful, concrete, tangible result as “granting a loan in an amount equal to the amount of the purchase transaction less the amount of funds in the first account”.

Further, in response to the October 29, 2007 telephone call the Applicant’s representative have distinguished over Preferred Customer Accounts by further amending independent claims 1 and 56 to recite: “receiving a plurality of deposit transactions depositing funds into a first account, wherein at least a portion of the deposit transactions are from an unnamed source, without identification of a person associated with the first account.” This clarifies that the present invention works with anonymous or unnamed sources i.e. without the identification of a person associated with the first account.

The Applicants acknowledge Examiner Chandler's recommendation to limit the account to be a prepaid account and the recommendation to incorporate the subject matter of dependent claim 8 regarding a second institution into the independent claims.

However, after studying the cited references Hogan, Kazaks, and in further view of Voltmer, the Applicants have concluded that the amendments to independent claims 1 and 56 including "receiving a plurality of deposit transactions depositing funds into a first account, wherein at least a portion of the deposit transactions are from an unnamed source, without identification of a person associated with the first account" distinguishes over Preferred Customer Accounts. The Applicants would like to thank Examiner Chandler. No further agreement was reached on this difference.

Objection to The Specification

As noted above, the Examiner objected to the specification because of an embedded hyperlink. The Applicants have carefully amended the specification to remove browser-executable code. The Applicants respectfully submit that the Examiner's objection has been overcome and should be withdrawn.

Objection to Claims for Informalities

As noted above, the Examiner objected to claims 1, 6, 9, 13, 14, and 16 for informalities. The Applicants wish to thank the Examiner for the suggestions. All the claims have been carefully amended as suggested by the Examiner or in the alternative the language deleted. Further, the Applicants wish to point out that claim 16 as originally filed did not recite "determination". The Applicants believe that the Examiner meant to object to claim 15, not claim 16, for this language. The Applicants respectfully submit that the Examiner's objection has been overcome and should be withdrawn.

Rejection under 35 U.S.C. §112, ¶2

As noted above, the Examiner rejected claims 1-16 under 35 U.S.C. 112, ¶ 2, as being indefinite. The Applicants wish to thank the Examiner for the suggestions. Claims 2-4 were cancelled rendering the Examiner's rejection to these claims moot.

Claim 1 has been carefully amended to remove the term “indicative”. Further claims 7, 8, 9, 14 and 15 have been carefully amended to remove the term “substantially”. Claim 6 has been carefully amended to clarify “wherein the loan repayment ~~portion~~portion is ~~indicated~~ specified by a unnamed person associated with the first account.” This clarifies that the person maybe anonymous i.e. unnamed. Regarding claims 10, 11, 12, 13, 14, 15, and 16 have been amended to replace the term anonymous with unnamed and non-anonymous as named to avoid confusion. In view of the foregoing, the Applicants respectfully submit that the Examiner’s rejection of claims 1, 5-16 has been overcome and should be withdrawn.

Rejection under 35 U.S.C. §102(e)

As noted above, the Examiner rejected claims 1-9 under 35 U.S.C. § 102(e) as being anticipated by Hogan (U.S. Pat. No. 6,315,193). Independent claim 1 have been amended to distinguish over Hogan. Specifically, independent claim 1 now recites *inter alia*:

1. (Currently Amended) An automated method of authorizing a consumer purchase comprising the steps of:

receiving a plurality of deposit transactions depositing funds into a first account, wherein at least a portion of the deposit transactions are from an unnamed source, without identification of a person associated with the first account;

determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

receiving a request for authorization of a purchase transaction associated with the first account; and

authorizing the purchase transaction when funds in the first account plus the first credit limit are greater than or equal to an amount of the purchase transaction and granting a loan in an amount equal to the amount of the purchase transaction less the amount of funds in the first account.

Support for this amendment is found in the specification as originally filed at page 4 line 14, through 8 line 10. No new matter has been added. The present invention allows only the purchase transaction information to be used on deciding whether or not to extend credit. This is important to serve customers that can not or choose not to establish credit through separate financial histories and financial background checks. In contrast Hogan expressly teaches at col 5, lines 29-33 (emphasis added) that “*a financial institution receives an application from a customer desiring to obtain a financial transaction card having an installment loan feature.*” Hogan goes on to state at col. 5, lines 44-45 and illustrates at steps 120 and 130 of FIG. 1A that “*If the consumer is not creditworthy the application is rejected in step 130.*” Accordingly, Hogan requires that the application be pre-approved to receive a loan feature. The present invention solves this problem by looking only at transaction histories for the account by:

receiving a plurality of deposit transactions depositing funds into a first account, wherein at least a portion of the deposit transactions are from an unnamed source, without identification of a person associated with the first account;

determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

Unlike Hogan, no separate application needs to be filled out. The transaction information into the account is used to determine credit worthiness.

Accordingly, independent claim 1, distinguishes over Hogan's use of application information to base credit worthiness for at least this reason.

The use of transaction information on the account, as opposed to credit worthiness through an application of Hogan, is further clarified in dependent claims 2, 3, 4 and 5 (emphasis added) :

Claims 5 and 6 (claim 6 depends from 5) – further comprising:

receiving a subsequent deposit transaction having additional funds associated with the first account;

applying a loan repayment portion of the additional funds to at least partial repayment of the loan and transferring a remaining portion of the additional funds to the first account; and

wherein the transaction information includes loan granting and loan repayment information.

Further claims 7 and 8 build upon the use of granting a loan only on the transaction information in an account as opposed to other financial information to help a user build up credit at second institution by reciting:

Claim 7 – further comprising:

determining a second credit limit amount associated with a second account independent of the first account in response to the transaction information;

receiving a request for authorization of a second purchase transaction associated with the second account; and

authorizing the second purchase transaction if the second credit limit amount is sufficient to facilitate the second purchase transaction.

Claim 8 - wherein the preceding steps are performed by a first financial institution and the subsequent steps are performed by a second financial institution independent of the first financial institution, the method at the second financial institution comprising the steps of:

determining a second credit limit amount associated with a second account independent of the first account in response to the transaction information received from the first financial institution;

receiving a request for authorization of a second purchase transaction associated with the second account; and

authorizing the second purchase transaction if the second credit limit amount is sufficient to facilitate the second purchase transaction.

Regarding Claim 9, the transaction history is used to increase the loan amount in response to transaction history, without the use of other financial information.

Claim 9 - further comprising the steps of:

receiving a plurality of deposit transactions depositing funds into the first account;

authorizing each of a plurality of purchase transactions if funds within the first account are sufficient to facilitate each of the plurality of purchase transactions; and

including the plurality of deposit transactions and purchase transactions in the transaction information; wherein
said step of determining the first credit limit determines the first credit limit to be zero upon reception of a first deposit transaction and increases the limit in response to subsequent deposits.

The Examiner cites 35 U.S.C. § 102(b) and a proper rejection requires that a single reference teach (i.e., identically describe) each and every element of the rejected claims as being anticipated by Hogan.¹ Because the elements in independent claim 1 of “determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based upon transaction information including the plurality of deposits into the first account” is not taught or disclosed by Hogan. The credit worthiness in Hogan is based on an application rather than actual transaction history. Hogan cannot allow someone not able to establish credit without use of an application process. Accordingly, the present invention distinguishes over Hogan for at least this reason. The Applicants respectfully submitted that the Examiner’s rejection under 35 U.S.C. § 102(b) has been overcome.

Independent claim 1 has been amended to distinguish over Hogan. Claims 2-9 depend from claim 1. Since dependent claims contain all the limitations of the independent claims, claims 2-9 distinguish over Hogan, as well.

Rejection under 35 U.S.C. §103(a) Hogan in view of Kazaks

As noted above, the Examiner rejected claims 10-14, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Hogan (U.S. Pat. No. 6,315,193) in view of Kazaks (U.S. Pat. Pub. 2002/0046341). The Examiner goes on to combine Hogan with Kazaks.² The Examiner recites 35 U.S.C. §103. The Statute expressly requires that obviousness or non-obviousness be determined for the claimed subject matter “as a whole,” and the key to proper determination of the differences between the prior art and the present invention is giving full recognition to the invention “as a whole.” The Hogan reference

¹ See MPEP §2131 (Emphasis Added) “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.”

² Applicants make no statement whether such combination is even proper.

taken alone and/or in view of Kazaks simply does not suggest, teach, or disclose the patentably distinct limitation of:

determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

Kazaks is completely silent on establishing credit for a loan. The present invention allows credit for a loan to be established anonymously i.e. from “*an unnamed source without identification of a person associated with the first account*” and “*determining the first credit limit includes transaction information from the plurality of unnamed deposit and purchase transactions in the determination of the first credit limit.*”

Claims 11 - goes a step further on the anonymous or unnamed nature of the present invention, by reciting “*wherein the unnamed deposit transactions include cash deposits received at an automated currency processor using a card having information identifying the first account but not the person, and the unnamed purchase transactions are facilitated by the card having the information identifying the first account but not the person.*”

Independent claim 1 has been amended to distinguish over Hogan taken alone and/or in view of Kazaks. Claim 10 depend from claim 1. Since dependent claims contain all the limitations of the independent claim, claim 10 distinguish over Hogan taken alone and/or in view of Kazaks as well.

Further, claims 11-14 and 16, depend from claim 10. Since dependent claims contain all the limitations of the independent claim, claim 11-14 and 16 distinguish over Hogan taken alone and/or in view of Kazaks as well.

Further, Applicants submit that the combination of Hogan with Kazaks *teaches away* from using transaction history for extending a loan. As previously discussed, there is Hogan requires a credit application. This type of system completely eliminates that ability for a lot of people to establish consumer credit for loans.

Where the prior art points away from the combination, modification or substitution of which is the premises of the PTO's alleged *prima facie* case of obviousness, there likewise is a built-in traversal of the rejection. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).⁷ Here, the prior art Hogan is pointing away from the use of transaction history in order to establish credit worthiness.

Moreover, the Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Here the intent, purpose and function of Hogan taken alone and/or in view of Kazaks is the use of application data from a customer wishing to open an account, in contrast the intent and purpose of the present invention to review transaction histories within the account as a basis to extending credit. These transaction histories can include deposits, purchase transactions, and purchase locations. Hogan does not allow individuals to establish credit unless they provide an application with financial history. The present invention solves this problem by examining transaction histories for the account being used. This combination, as suggested by the Examiner, destroys the intent and purpose of Hogan taken alone and/or in view of Kazaks use of applications used to establish credit. Accordingly, the

present invention is distinguishable over Hogan taken alone and/or in view of Kazaks for this reason as well.

Rejection under 35 U.S.C. §103(a) Hogan in view of Kazaks and Voltmer

As noted above, the Examiner rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Hogan (U.S. Pat. No. 6,315,193) in view of Kazaks (U.S. Pat. Pub. 2002/0046341) and in further view of Voltmer (U.S. Pat. Pub. 2002/0112177). The Examiner goes on to combine Hogan with Kazaks and Voltmer.³ In the section above entitled "Rejection under 35 U.S.C. §103(a) Hogan in view of Kazaks", claims 10, 12, and 13 were shown to distinguish over Hogan in view of Kazaks. In the spirit of compact prosecution, these arguments are incorporated here. Claim 15 depends on claim 13 which depends on claim 12 which depends on claim 10, which depends on claim 1. Voltmer is silent on

determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

Since dependent claims contain all the limitations of the independent claim, claim 15 distinguish over Hogan taken alone and/or in view of Kazaks and Voltmer as well and the Examiner's rejection should be withdrawn.

Newly Added Claims 55-57

Claims 55-57 have been newly added to further clarify the present invention. Regarding claim 55, this dependent claim recites "wherein the first account is a prepaid card

³ Applicants make no statement whether such combination is even proper.

account” to cover a primary embodiment of the present invention. Since dependent claims contain all the limitations of the independent claim, claim 55 distinguishes over Hogan taken alone and/or in view of Kazaks and Voltmer as well.

Claims 56 and 57 emphasize the embodiment of the present invention where the account holder wishes to remain unnamed (anonymous) and rely on the transaction information of deposits, purchase transactions, and purchase locations to establish credit worthiness by reciting

receiving a plurality of deposit transactions depositing funds into a first card account, wherein the deposit transactions are from an unnamed source without identification of a person associated with the first account;

determining a first credit limit associated with a loan amount for the first account wherein the first credit limit is based solely upon transaction information for the first account, wherein the transaction information consists of one or more of: i) the plurality of deposit transactions into the first account, ii) purchase transaction information for the first account; and iii) loan granting and repayment information for the first account, and no other financial information of an account holder associated with the first account;

Support for this amendment is found in the specification as originally filed at page 4 line 14, through 8 line 10. No new matter has been added. Accordingly, for reasons stated above, claims 56 and 57 are allowable as well, which allowance is respectfully requested.

CONCLUSION

The prior art made of record and not relied upon was reviewed and Applicants believe that such prior art is not pertinent to Applicants' disclosure.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the

scope of any claim, unless Applicants have argued herein that such amendment was made to distinguish over a particular reference or combination of references.

Applicants acknowledge the continuing duty of candor and good faith to disclose information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 50-1556. In view of the preceding discussion, it is submitted that the claims are in condition for allowance. Reconsideration and re-examination is requested.

PLEASE CALL the undersigned if the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, or that in any way it would help expedite the prosecution of the patent application.

Appl. No. 10/085,820
Docket No. 640-A01-004
Reply to Office Action of May 3, 2007

Respectfully submitted.

Date: November 6, 2007

By: /Jon A. Gibbons/
Jon A. Gibbons(Reg. No.37,333)

Attorney for Applicant

FLEIT KAIN GIBBONS
GUTMAN BONGINI & BIANCO P.L.
One Boca Commerce Center
551 N.W. 77th Street
Suite 111, Boca Raton, Florida 33487
Telephone: (561) 989-9811
Facsimile: (561) 989-9812
www.FocusOnIP.com